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9 **BEFORE THE**  
**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 BENIGNO OLARTE  
13 2561 Saturn Avenue  
Huntington Park, CA 90255  
14 Occupational Therapy License No. OT 2883

15 and

16 BENIGNO OLARTE  
c/o Eric Terrada  
17 4101 Rosewood Avenue  
Los Angeles, CA 90004  
18 Occupational Therapy License No. OT 2883

19 Respondent.

Case No. OT2004-127

OAH No.

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

20 **FINDINGS OF FACT**

21 1. On or about November 3, 2006, Complainant Heather Martin, in her  
22 official capacity as the Executive Officer of the California Board of Occupational Therapy,  
23 Department of Consumer Affairs, filed Accusation No. OT2004-127 against BENIGNO  
24 OLARTE (Respondent) before the California Board of Occupational Therapy.

25 2. On or about November 5, 2002, the California Board of Occupational  
26 Therapy (Board) issued Occupational Therapy License No. OT 2883 to Respondent. The license  
27 expired on November 30, 2006, and has not been renewed.  
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1                   3.       On or about November 15, 2006, Rebeca Garcia, an employee of the  
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.  
3 OT2004-127, Statement to Respondent, Notice of Defense, Request for Discovery, and  
4 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record  
5 with the Board, which was and is 2561 Saturn Avenue, Huntington Park, CA 90255. In addition,  
6 all of the above documents were also sent to another address found in the file which was Benigno  
7 Olarte, c;/o Eric Terrada, 4101 Rosewood Avenue, Los Angeles, CA 90004. A copy of the  
8 Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are  
9 incorporated herein by reference.

10                   4.       Service of the Accusation was effective as a matter of law under the  
11 provisions of Government Code section 11505, subdivision (c).

12                   5.       On or about December 21, 2006, the aforementioned documents were  
13 returned by the U.S. Postal Service marked "Attempted - Unknown." A copy of the postal  
14 returned documents are attached hereto as exhibit B, and are incorporated herein by reference.

15                   6.       Government Code section 11506 states, in pertinent part:

16                   "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
18 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
19 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

20                   7.       Respondent failed to file a Notice of Defense within 15 days after service  
21 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
22 Accusation No. OT2004-127.

23                   8.       California Government Code section 11520 states, in pertinent part:

24                   "(a) If the respondent either fails to file a notice of defense or to appear at the  
25 hearing, the agency may take action based upon the respondent's express admissions or  
26 upon other evidence and affidavits may be used as evidence without any notice to  
27 respondent."

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9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A, B and C, finds that the allegations in Accusation No. OT2004-127 are true.

10. The total costs for investigation and enforcement are \$2,748.50 as of January 3, 2007.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent BENIGNO OLARTE has subjected his Occupational Therapy License No. OT 2883 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Occupational Therapy is authorized to revoke Respondent's Occupational Therapy based upon the following violations alleged in the Accusation:

a. Respondent is subject to disciplinary action under section 2570.28, subdivision (e) and 490 of the Code, as defined in section 2570.29, subdivision (c), in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of an occupational therapist, as follows:

b. On or about December 28, 2005, Respondent was convicted on a plea of guilty on one count of violating Health and Safety Code section 11377, subdivision (a), a felony (possession of a controlled substance), in the Superior Court of California, County of Los Angeles, Central Judicial District, Case No. BA283962, entitled *The People of the State of California v. Benigno Jarabato Olarte*.

c. The circumstances surrounding the conviction are that on or about May 22, 2005, Respondent unlawfully possessed a controlled substance, to wit, methamphetamine.

d. Respondent is subject to disciplinary action under section 2570.28, subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in section

2570.29, subdivision (a), as follows:

e. On or about December 24, 2005, during a search conducted by a police officer, Respondent was found to be in possession of a 4" cylindrical glass pipe with a burnt bulbous end. The interior of the pipe contained a white residue resembling methamphetamine. Additionally, Respondent was found to be in possession of nine (9) small zip lock baggies. Each baggie contained a crystallized substance resembling methamphetamine.

f. On or about May 22, 2005, during a search conducted by a police officer, Respondent was found to have in his possession, a clear plastic baggie containing a crystal substance resembling methamphetamines and a glass pipe used for smoking methamphetamines, as more fully set forth above in paragraph 11A and 11B.

g. Respondent is subject to disciplinary action under section 2570.28, subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in section 2570.29, subdivision (b)(1) and (2), for violating California Code of Regulations, title 16, section 4170, subdivision (b)(2), in that on or about May 22, 2005, during a search of Respondent, he admitted to a police officer that he was smoking drugs.

h. Respondent is subject to disciplinary action under section 2570.28, subdivision (a) and (c) of the Code, on the grounds of unprofessional conduct, as defined in California Code of Regulations, title 16, section 4170, subdivision (e), in that Respondent failed to cooperate and/or respond to the Board's letters dated June 8, 2005, July 26, 2005, August 31, 2005, and December 1, 2005, regarding his May 22, 2005 arrest.

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**ORDER**

IT IS SO ORDERED that Occupational Therapy License No. OT 2883, heretofore issued to Respondent BENIGNO OLARTE, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute. Respondent may apply for reinstatement two years from the effective date of the decision.

This Decision shall become effective on March 9, 2007.

It is so ORDERED February 7, 2007

  
FOR THE CALIFORNIA BOARD OF OCCUPATIONAL  
THERAPY  
DEPARTMENT OF CONSUMER AFFAIRS

60185086.wpd

DOJ docket number:LA2006600017

**Attachments:**

- Exhibit A: Accusation No.OT2004-127, Related Documents, and Declaration of Service
- Exhibit B: Postal Return Documents
- Exhibit C: Certification of Costs: Declaration of Sharon F. Cohen, R.N.